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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/699,220	10/31/2003	Jim Musbach	004-4-1	2794
30080	7590	05/18/2006	EXAMINER	
LAW OFFICE OF CHARLES E. KRUEGER P.O. BOX 5607 WALNUT CREEK, CA 94596-1607			VERBITSKY, GAIL KAPLAN	
			ART UNIT	PAPER NUMBER
			2859	

DATE MAILED: 05/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

PD

<b>Office Action Summary</b>	<b>Application No.</b> 10/699,220	<b>Applicant(s)</b> MUSBACH ET AL.	
	<b>Examiner</b> Gail Verbitsky	<b>Art Unit</b> 2859	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 5 and 6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 5, 6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)                                    | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claim 1 is finally rejected under 35 U.S.C. 103(a) as being unpatentable over Kienitz (U.S. 2004/0264542, effective filing date 03/13/2002) in view of Sorensen (U.S. 5335308), Blair (U.S. 6277067), Teetzel (U.S. 5584137) and Winnard (U.S. 6614337).

Kienitz discloses in Figs. 1A, 1B a device/ IR radiometer having a laser sighting system (paragraph [0016]); an IR sensor (detector) with detector optics for focusing IR radiation emitted by an energy zone/ target surface onto the detector (temperature mode) and a digital camera (photography mode) (paragraphs [0038] and [0044]), all located in a portable hand-held housing, as shown in Fig. 1. The device also has a temperature display. Kienitz states that the device is usable in an industrial repair service (paragraph [0018]). The device has a handle, as shown in Figs. 1A, 1B.

Kienitz does not explicitly teach the particular sighting system, as claimed by applicant, a magnetic base and an illuminating light source. Kienitz does not clearly state that the repair service is repair of automobiles, as claimed by applicant.

Sorensen discloses in Fig. 7 a device in the field of applicant's endeavor and states that it is usable in an automotive service repair.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the device usable during automobile repair, as taught by Sorensen, because car service is also a repair service, which requires temperature/thermal analysis during a repair such as, for example, paint application.

Blair teaches a portable apparatus/ device comprising/ containing a dual laser sighting system including two lasers 24 oriented to have their beams cross (converge) at the focal point of a detector (camera) 30 optics, so as to ensure that a target surface is properly focused in the detector, so as to generate accurate data of the target surface. The detector and the sighting system are, inherently, located in the common housing, as shown in Fig. 4.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device disclosed by Kienitz, so as to have such a sighting system that has the beams crossed at the focus of the detector's optics, as taught by Blair, so as to receive an enhanced spot/ illuminated delineation on the target surface and ensuring that the surface is properly focused, in order to achieve more accurate results when inspecting the surface.

Teetzel discloses a sighting device (IR laser sighting module) in combination with an illuminating device (light source/ flashlight) 12 which, although, an independent device, when attached, forms the same housing with the laser module, as shown in Fig. 1. The illuminating device 12 is needed so as to illuminate a target area along with a laser dot (col. 5, lines 17-30, col. 8, lines 27-33).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device, disclosed by Kienitz, so as to have an additional light source/ flashlight located in the same housing, so as to allow the operator to conveniently illuminate the target/ energy zone delineated by the laser sighting module, in order to enhance a target/ energy spot of interest, so as to allow the operator to clear delineate the target for the intended use.

Winnard discloses in Fig. 1 a device having a magnetic surface/ base; the device is attachable to any surface including a surface of a car, so as to attach a tool/ instrument.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device disclosed by Kienitz, so as to add a magnetic base, as taught by Winnard, to the device disclosed by Kienitz, so as to make the device attachable to an automobile during inspection, and thus, to allow the operator to fix it at any desirable position, in order to inspect any point of the target surface of the automobile from the best available position.

3. Claim 5 is finally rejected under 35 U.S.C. 103(a) as being unpatentable over Kienitz, Sorensen (U.S. 5335308), Blair (U.S. 6277067), Teetzel and Winnard (U.S. 6614337), as applied to claim 1, and further in view of Chung et al. (U.S. 20030202558) [hereinafter Chung].

Kienitz, Sorensen, Blair, Teetzel and Winnard disclosed the device as stated above.

They do not explicitly teach the particular display, as stated in claim 5.

Chang discloses an IR thermometer having a temperature display, the display comprising a flashing backlighting (backlite) supplied by different color (highlights) LED.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the display of the device disclosed by Kienitz, Sorensen, Blair, Teetzel and Winnard, so as to have a flashing colored backlighting, as taught by Chung, so as to attract the operator attention on the temperature data, so as to take appropriate and timely actions.

4. Claim 6 is finally rejected under 35 U.S.C. 103(a) as being unpatentable over Kienitz, Sorensen (U.S. 5335308), Blair (U.S. 6277067), Teetzel and Winnard (U.S. 6614337), as applied to claim 1, and further in view of Hollander et al. (U.S. 6095682) [hereinafter Hollander] and Chung et al. (U.S. 20030202558) [hereinafter Chung].

Kienitz, Sorensen, Blair, Teetzel and Winnard disclosed the device as stated above.

They do not explicitly teach the particular display, as stated in claim 6.

Hollander discloses in Fig. 1 a device in the field of applicant's endeavor comprising an emissivity indicator and maximum temperature value on the display. It is inherent, that the maximum value would be updated depending on the particular temperature measurements.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the display of the device disclosed by Kienitz, Sorensen, Blair, Teetzel and Winnard, so as to have a maximum temperature value on the display, as taught by Hollander, so as to allow the operator to immediately evaluate

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if the measured temperature is above maximal predetermined temperature and to enable the operator take necessary actions.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the display of the device disclosed by Kienitz, Sorensen, Blair, Teetzel and Winnard, so as to have indicate a set emissivity data, as taught by Hollander, so as to allow the operator to evaluate temperature with consideration of the correction factor for emissivity.

Chung discloses an IR thermometer having a temperature display, the display comprising a C/F switch (symbol), a low battery indicator and flashing backlighting (backlite) supplied by different color (highlights) LED.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the display of the device disclosed by Kienitz, Sorensen, Blair, Teetzel and Winnard, so as to have a C/F symbol, as taught by Chung, so as to allow the operator to use the device in different temperature system, and thus, make it useful with European devices.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the display of the device disclosed by Kienitz, Sorensen, Blair, Teetzel and Winnard, so as to have a low battery indicator, as taught by Chung, so as to remind the operator to replace or charge the battery, in order to provide a proper and timely maintenance of the device.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the display of the device disclosed by Kienitz,

Sorensen, Blair, Teetzel and Winnard, so as to have a flashing colored backlighting, as taught by Chung, so as to attract the operator attention on the temperature data, so as to take appropriate and timely actions.

### ***Response to Arguments***

5. Applicant's arguments filed on March 07, 2006 have been fully considered but they are not persuasive.

Applicant states that in Blair the dual laser beams cross at the fixed focal points of the camera. Also, the applicant states that the Blair's system is for forming image and no energy zone is defined for illumination. This argument is not persuasive because Blair teaches having two beams crossed at the focus of the detector optics, as claimed by applicant. Since applicant does not clearly define the energy zone, it can be considered, in a broad sense, that the energy zone is limited to a point. With respect to "the energy zone defined for illumination" - this argument is not persuasive because this limitation is not stated in claim 1. It is the claims that define the claimed invention, and it is claims, not specification that are anticipated or unpatentable. Constant v. Advanced Micro-Devices, Inc., 7 USPQ2d 1064.

Also, applicant does not claim to illuminate the energy zone but "an area surrounding the energy zone". The combination of the references teaches to illuminate the area surrounding the point on the surface (area surrounding the energy zone), as claimed by applicant.

Applicant states that Teetzel is non-analogous art. In response to applicant's statement that Francis is a non-analogous art, it has been held that the determination that a reference is from non-analogous art is twofold. First, we decide if the reference is



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within the filed of inventor's endeavor. If it is not, we proceed to determine whether the reference is reasonably pertinent to the particular problem with which the inventor was involved. In re Wood, 202 USPQ 171, 174. In this case, the examiner uses Teetzel only as a secondary reference for it's teaching that the surface of interest can be illuminated for enhancing visibility of the surface, or, inherently, a zone/ point on the surface.

Applicant states that Sorenson does not image an energy zone but provides a temperature reading. This argument is not persuasive because the Examiner uses Sorenson only as a secondary reference only for it's teaching that a dual laser device can be used to obtain temperature data in an automotive service repair.

Also, the limitation stating "for use in automobile diagnostic" is a functional recitation that has not been given a patentable weight because it is narrative in form. In order to be given patentable weight, a functional recitation must be expressed as a means for performing the specified function, as set fourth in 35 USC 112, 6<sup>th</sup> paragraph, and must be supported by recitation in the claims of sufficient structure to warrant the presence of the functional language. In re Fuller, 1929 C.D. 172; 388 O.G. 279.

B) With respect to the preamble of claims 1, 5-6: the preamble of the claims does not provide enough patentable weight because it has been held that a preamble is denied the effect of a limitation where the claim is drawn to a structure and a portion of the claim following the preamble is a self-contained description of the structure not depending for completeness upon the introductory clause. Kropa v. Robie, 88 USPQ 478 (CCPA 1951).

Applicant states that Winnard discloses a magnetic system for storing tools and that "there is no teaching of a magnetic base for attaching a tool to an automobile". This argument is not persuasive because, A) "for creating an attachment to an automobile" is a functional recitation that has not been given a patentable weight because it is narrative in form. In order to be given patentable weight, a functional recitation must be expressed as a means for performing the specified function, as set forth in 35 USC 112, 6<sup>th</sup> paragraph, and must be supported by recitation in the claims of sufficient structure to warrant the presence of the functional language. In re Fuller, 1929 C.D. 172; 388 O.G. 279.

B) It has been held that the determination that a reference is from non-analogous art is twofold. First, we decide if the reference is within the field of inventor's endeavor. If it is not, we proceed to determine whether the reference is reasonably pertinent to the particular problem with which the inventor was involved. In re Wood, 202 USPQ 171, 174. In this case, the examiner uses Winnard only as a secondary reference for its teaching that the tool can be attached to the surface of interest by a magnet.

### ***Conclusion***

**6. THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art cited in the PTO-892 and not mentioned above disclose related devices and methods.

***Hollander et al. (U.S. 5823679) discloses in Fig. 12 a device comprising an IR temperature measuring and processing device including IR optics, inherently having a focal length, the optic directing IR energy from an energy zone from a target onto an IR sensor so as to determine the temperature of the target at the energy zone. The device has a dual laser-sighting device. Hollander does not teach beam crossing.***

***Hollander discloses in Fig. 12 a device comprising a dual laser device for illuminating (visibly outlining periphery, col. 4, lines 44-61) an area around the center of an energy zone of a target. Hollander does not teach beam crossing.***

***Daringer et al. (U.S. 4315150) discloses an IR thermometer having a sighting system comprising two intersecting light beams and an IR detector to detect IR from a target surface. The thermometer is located in housing, as shown in Fig. 1. Daringer does not teach beam crossing at the focus of the IR optics.***

***Litvin et al. (U.S. 5839829) discloses a device in the field of applicant's endeavor wherein the spot of interest is focused on the IR detector 16.***

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Any inquiry concerning this communication should be directed to the Examiner Verbitsky who can be reached at (571) 272-2253 Monday through Friday 8:00 to 4:00 ET.

GKV

*Gail Verbitsky*

*Primary Patent Examiner, TC 2800*



May 01, 2006